



March 16, 1999

Mr. John J. Carlton  
Armbrust, Brown & Davis, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701-4042

OR99-0752

Dear Mr. Carlton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122854.

The City of Pflugerville (the "city"), which you represent, received an open records request for certain information pertaining to the city council's recent votes to annex approximately 222 acres. Specifically, the requestor seeks the following categories of information:

1. A copy of all of the [city council] meeting agendas beginning with the meeting to initiate annexation to current.
2. A copy of all of the minutes of meetings beginning with the meeting to initiate annexation to current.
3. A copy of all audio recordings of meetings beginning with the meeting to initiate annexation to current.
4. Any finalized or draft ordinances related to this annexation.
5. The service plan for this annexation.
6. All back-up documents related to this annexation.
7. Any other information not included above related to this annexation.

You contend that the above requested information is excepted from required public disclosure pursuant to section 552.103 of the Government Code.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). In this instance you have made the requisite showing that the requested information relates to pending litigation in which the city has been made a defendant. This does not, however, end our discussion of whether the city may withhold the requested information pursuant to section 552.103.

The minutes, tape recordings, and agendas of a governmental body's public meetings are specifically made public by statute, *see* Gov't Code §§ 551.022 (minutes and tape recordings), 551.043 (notice), and therefore may not be withheld from the public pursuant to section 552.103 of the Government Code. Information specifically made public by statute may not be withheld from the public by any of the Open Records Act's exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). The city therefore must release all records responsive to items 1, 2, and 3 listed above.

In item 4, the requestor seeks copies of any city ordinances related to the annexation. In Open Records Decision No. 551 (1990), this office addressed whether a city ordinance could be withheld from the public under the Open Records Act.

It is difficult to conceive of a more open record. The law, binding upon every citizen, is free for publication to all. *Banks v. Manchester*, 128 U.S. 244, 253 (1888). This policy is based on the concept of due process which requires that the people have notice of the law. *Building Officials & Code Admin. v. Code Technology, Inc.*, 628 F.2d 730, 734 (1st Cir. 1980). Given this constitutional consideration, it is difficult to hypothesize a circumstance that would bring a law or ordinance within an exception to public disclosure.

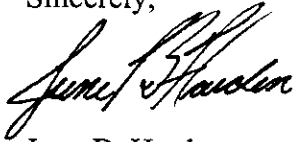
The city must release to the requestor any responsive city ordinance passed by the city and any document attached to or incorporated by reference into the ordinance, including the requested service plan. The city may withhold, however, all remaining requested documents pursuant to section 552.103.<sup>1</sup>

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<sup>1</sup>In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being more prominent.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RWP/ch

Ref.: ID# 122854

Enclosures: Submitted documents

cc: Mr. Ali Hassibi  
Hassibi & Associates  
7719 Wood Hollow Drive, Suite 219  
Austin, Texas 78731  
(w/o enclosures)